

EDWARD J. MARKEY

7TH DISTRICT, MASSACHUSETTS

ENERGY AND COMMERCE COMMITTEE

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THE INTERNET

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October 28, 2004

The Honorable Michael K. Powell
Chairman, Federal Communications Commission
445 12th Street, S.W.
Washington, D.C. 20554

Dear Mr. Chairman:

I write regarding the Commission's implementation of the universal service provisions of the Communications Act (47 U.S.C. 254). As one of the primary authors of the E-rate provisions of the Telecommunications Act, I am concerned that schools, libraries, and rural healthcare facilities will not receive the timely financial support that was committed to such entities for important social initiatives. I am also concerned that your decision to abruptly adopt a new accounting regime for the E-rate may similarly undermine the integrity of other universal service programs and also put them in jeopardy of not being able to meet their commitments.

Recently the Commission made changes to the accounting regime for the E-rate program, reportedly at the behest of the Bush Administration's Office of Management and Budget (OMB). The result of these changes has resulted in many schools, libraries, and rural health facilities not receiving hundreds of millions of dollars committed to such entities. This withholding of committed funding is now occurring in spite of the fact that the program apparently had over \$2 Billion on hand when the Commission made the accounting change.

In addition, your decision to subject the E-rate program to OMB's interpretation of the requirements of the Anti-Deficiency Act may also adversely affect similar programs for rural and low income consumers.

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Since the availability of affordable telecommunications services to all Americans is a key guiding principle of the Communications Act's universal service provisions, I am interested in what your plans are for applying the requirements of the Anti-Deficiency Act to these programs as well.

In order to fully understand your rationale for making this accounting change, I request the answers to the following questions by November 12th:

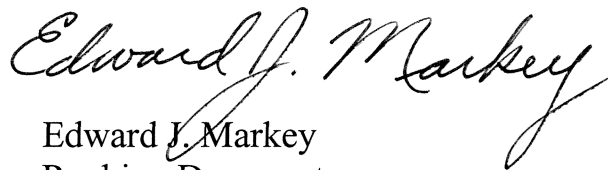
- 1) What was the financial status of the E-rate program when you decided to make the accounting change? Was there any risk that the program would not meet its funding commitments prior to your decision to change the accounting regime?
- 2) What was your expectation as to the immediate, short-term financial effect of such a change? What was your expectation of the long-term financial effect of such change?
- 3) When you decided to make the change, did you expect committed funding to schools, libraries, and rural healthcare facilities to be withheld to conform with the accounting change?
 - a. If so, please explain the extent of such withholding you expected and how you intended to rectify this shortfall.
 - b. If not, when did you become aware that your decision would lead to the withholding of funds? Please explain.
- 4) When you decided to make the accounting change, what was your expectation as to the effect of this change upon -
 - a. consumer ratepayers? Did you expect no change in consumer bills?
 - b. the range of advanced services available for funding support? Did you expect certain services would need to be dropped from the list of supported services or otherwise go unfunded for a period of time?
 - c. entities who had received commitment letters or who had pending applications for support? What notice did you give the public regarding your decision and what form did that notice take?
- 5) What was the legal basis for making the accounting change?

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- 6) Was this change made pursuant to a request from OMB? If so, was that request in writing and when was such request made?
- 7) When you decided to make the accounting change for the E-rate program, what judgment did you make regarding the applicability of the same legal interpretation for the High Cost Fund or other universal service mechanisms?
- 8) Is it true that funding disbursed for other universal service programs, e.g., rural high cost funding, is often expended in anticipation of receiving funds collected from telecommunications carriers throughout the year? Please explain.
- 9) Does USAC make rural high cost funding decisions on a quarterly or annual basis? Does USAC collect funds to meet such decisions on a quarterly or annual basis? Does USAC make expenditures in support of this program on a quarterly or annual basis? Please explain.
- 10) Are universal service funds obligated for rural high cost support on the basis of actual or projected costs? Please explain.
- 11) Please explain any distinctions in the collection, storage, and expenditure of universal service funds for the E-rate program, the rural healthcare program, the Rural High Cost Fund, and the Low Income Fund that may justify treating any one of them differently under your interpretation of the Anti-Deficiency Act.
- 12) When do you expect funding for E-rate recipients to be restored and when can entities whose funding has been suspended expect to receive these funds?

Thank you for your attention in responding to this request for information.

Sincerely,

A handwritten signature in black ink, reading "Edward J. Markey". The signature is fluid and cursive, with the first letters of each word being capitalized and prominent.

Edward J. Markey
Ranking Democrat
House Subcommittee on
Telecommunications and the Internet